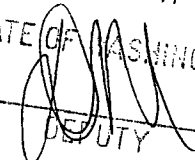


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COURT OF APPEALS NO. 44039-3-II  
PIERCE COUNTY SUPERIOR COURT NO. 93-3-04576-9  
IN THE COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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In Re the Matter of:

AMANDA L. BLANK,

Appellant,

vs.

VERNON RUSSELL BLANK,

Respondent.

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**BRIEF OF RESPONDENT**

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### ***STATEMENT OF CASE***

Russell Blank and Amanda Blank<sup>1</sup> divorced on December 29, 1993. They have two children. Adam Blank was born on April 17, 1989, and Ryan Blank was born on November 11, 1991. Amanda Blank filed her Motion and Declaration for an Order Extending Post-Secondary Support for Adam Blank, on August 24, 2012. CP 285 - 320. At the time of filing of the motion, Adam Blank was twenty-three years and four months old.

Amanda Blank's Motion and Declaration for Order Extending Post-Secondary Support for Adam Blank was presented to the Court on September 7, 2012. In its oral ruling on September 7, 2012, the Court stated that Adam Blank had received his AA Degree and that there needed to be some end point to the post-secondary educational support, based upon the facts of this case. RP 26. The Court went on to state that it did not find the ADHD to be an exceptional circumstance and that in its prior rulings it had allowed post-secondary support for Adam from age 18 to 23 to complete an AA Degree. RP 27. Based upon the Court's findings, on September 7, 2012, the Court entered an Order Denying Motion Extending Post-Secondary Support for Adam Blank. CP 361 - 362.

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<sup>1</sup>For ease and clarify, the parties shall be referred to by their first names. No disrespect is intended.

As indicated in Russell Blank's Declaration dated September 19, 2011, for Adam to be a full time student at Pierce College, he was required to be completing twelve credits or more, per term. During his entire post-secondary educational process, Adam had never earned greater than ten credits, per term, towards his graduation requirements. Ex 3 to Sealed Confidential Report filed May 17, 2011. Even though Adam Blank had not graduated, Amanda Blank had Adam walk for graduation in 2011. Adam failed Math for Elementary Education 1 in both the winter and spring quarters of 2011. Adam took Public Speaking and Introduction to Theater in the fall of 2009, which classes did not require a written examination. Taking the grades for those two classes from Adam's transcript results in a grade point average far below 2.0. In the fall term of 2009, Adam took Introduction to Algebra, which was a remedial course, but he did not receive a grade. In the winter quarter of 2010, Adam received a grade of 1.3 for Introduction to Algebra. As of September 19, 2011, Adam had retaken six classes. The failing grades in those classes, over the course of the prior three years, were not included in Adam's grade point. If the failing grades had been included in Adam's cumulative grade point average, Adam's cumulative grade point average would have been approximately 1.2. During his enrollment at Pierce College, Adam had taken nine remedial courses, below the one hundred level, and he had not been successful in those classes.

CP 551 - 552.

During the summer of 2011, Adam retook English Composition 101, for which he had received a grade point of .08. Repeating the class in winter of 2011, he received a grade point average of 1.0. After taking English composition for the third time, Adam received a 2.0 GPA. After taking Math 171 for the fourth or fifth time, Adam finally passed that class, which was the only class he was taking at the time. CP 558.

In the fall of 2011, Adam completed Introduction to Weather, at Pierce College, and he received a grade of 1.0. He also repeated English 103 and received a .09 GPA. In July 2012, Adam thought that he may have graduated, but as of July 24, 2012, he did not have his diploma. CP 564 - 565. Moreover, Adam was required to take testing, which would allow him to continue taking classes relating to education. As of August 31, 2012, Adam had failed the test four times, which would allow him to continue in the teaching program. CP 326.

After the entry of the trial Court's Order Denying Motion Extending Post-Secondary Support for Adam Blank, Amanda Blank filed her Notice of Appeal on October 4, 2012.

### ***ARGUMENT***

#### **A. Standard of Review.**

A modification of child support is reviewed for a manifest abuse

of discretion. *In re: Marriage of McCausland*, 159 Wn.2d 607, 616, 152 P.3d 1013 (2007). A trial Court necessarily abuses its discretion if it bases its ruling on an erroneous view of the law. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

Discretion is abused where it is exercised on untenable grounds or for untenable reasons. *In re: Marriage of Tang*, 57 Wash. App. 648, 789 P.2d 118 (1990).

**B. The lower Court did not abuse its discretion by refusing to extend post-secondary educational expenses for Adam Blank beyond his 23<sup>rd</sup> birthday, based upon the failure to establish that exceptional circumstances existed.**

RCW 26.19.090(5) provides as follows:

The Court shall not order the payment of post-secondary educational expenses beyond the child's 23<sup>rd</sup> birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.

In a broad, general sense, a parent's duty of support ends when the child reaches the age of majority. Obviously, RCW 26.19.090(5) provides post-secondary educational support for dependent children. As stated in *Childers v. Childers*, 89 Wn.2d 592, 575 P.2d 201 (1978), the Court, in its discretion may order post-secondary majority support for dependent children on a case by case basis. The question before the trial Court here was whether either parent had a continuing support obligation for a 23 year old adult



child, who had taken five years to obtain an Associate's Degree, while attending college on a part-time basis and performing poorly in the academic setting. The trial Court, noting that there were no exceptional circumstances, answered this question in the negative.

In its oral ruling, the trial Court stressed that subpart 5 of RCW 26.19.090 specifically provided direction to the Court by indicating that post-secondary educational expenses shall not (emphasis added) paid beyond the child's 23<sup>rd</sup> birthday, except for exceptional circumstances. The word shall is mandatory, and exceptional circumstances is not defined. RP 13.

Where there is no legislative definition, within a statute, or used elsewhere, the meaning of the word or phrase depends on common usage and the context in which it is used. *Childers v. Childers*, 89 Wn.2d 592, 575 P.2d 201 (1978). Exceptional, used in the context of RCW 26.19.090(5), should utilize the normal meaning of that word, i.e., uncommon, extraordinary, deviating wildly from the norm, rare, and unusual. *Merriam-Webster Dictionary copyright © 2013 by Merriam-Webster, Incorporated*. There is nothing so exceptional, relating to Adam's Attention Deficit Disorder that would justify post-secondary educational support after age 23. As the trial Court stated, the statute provides specific legislative intent that there be an end point for post-secondary educational support. RP 15. The trial Court also emphasized that Adam had been given the opportunity to obtain

an AA Degree and that there are many, many people with Attention Deficit Disorder, which is not an uncommon concern. RP 16, 17.

As more fully explained in Mr. Blank's Brief filed under Court of Appeals No. 42959-4, in Division II, Russell Blank was extremely concerned about Adam Blank's lack of progress, inability to take classes beyond remedial or introductory courses, and continued failure and repeating of classes. Adam Blank's transcript from Pierce College fully establishes that Adam's grade point average was extremely poor, and that he never was enrolled as a full time student. Ex 3 Sealed Confidential Report filed May 17, 2011. The Court was also aware that during the period of time Adam was attending Pierce College on a part-time basis, he was also employable and actually employed. CP 565. The Court stated that if the trial Court had been evaluating this case under subsection 2 of RCW 26.19.090, and if the Court were looking at the abilities exhibited by Adam Blank in high school and in college, the trial Court opined that it did not see where the Court would be awarding post-secondary support beyond Adam's Associate Degree, which took five years to obtain. RP 22.

The Appellate Court must now determine whether the trial Court abused its discretion by denying continued post-secondary educational support beyond age 23, based upon the facts of this case. *In re: Marriage of Schumacher*, 100 Wash.App. 208, 997 P.2d 399 (2000). The Court abuses its discretion where it is exercised on

untenable grounds or for untenable reasons. *In re: Marriage of Tang*, 57 Wash.App. 648, 789 P.2d 188 (1990). The trial Court's Order must be supported by substantial evidence which is sufficient evidence to persuade a fair-minded person of the declared premise. *In re: Marriage of Hall*, 103 Wn.2d 236, 692 P.2d 175 (1984).

As can be noted from the pleadings in this case, the trial Court had significant involvement in this case, prior to entry of the Order Denying Ms. Blank's Motion to Extend Post-Secondary Educational Support for Adam Blank. CP 145 - 284. In fact, the trial Court's basis for its Order entered on September 7, 2012, is supported by several years of motions, evidence and a trial. The trial Court's determination is clearly based upon substantial evidence and is an appropriate application of discretion, when addressing exceptional circumstances, based upon the facts of this case.

**C. Russell Blank should be awarded his reasonable attorney's fees, pursuant to RCW 26.09.140.**

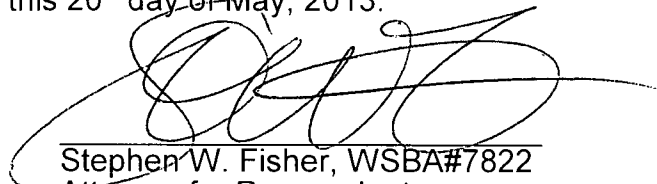
RAP 18.1 allows a party to seek attorney's fees on appeal if a statute grants the right to recover said fees. RAP 18.1. Under RCW 26.09.140, the Appellate Court may order a party to pay the costs and attorney's fees of the other party on appeal. In determining whether to award fees, the Appellate Court should consider the parties relative ability to pay and the arguable merit of the issues raised on appeal. *In re: Marriage of Muhammaad*, 153 Wn.2d, 108, P.3d 779 (2005).

Based upon Russell Blank's need for the payment of his attorney's fees, and based upon Amanda Blank's ability to pay said fees, Russell Blank requests that he be awarded attorney's fees on appeal. RAP 18.1, RCW 26.09.140.

**D. Relief requested by Russell Blank.**

Based upon the foregoing, Russell Blank requests that the Court deny Amanda Blank's appeal. Russell Blank also requests that he be awarded reasonable attorney's fees, pursuant to RCW 26.09.140 and RAP 18.1.

Respectfully submitted this 20<sup>th</sup> day of May, 2013.

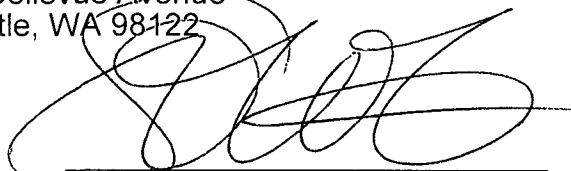


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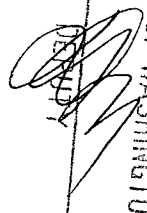
**CERTIFICATE OF SERVICE**

I certify that on the 20<sup>th</sup> day of May, 2013, I mailed a true and accurate copy of the foregoing Brief of Respondent, by first class mail, postage prepaid, to:

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